

INDIANA DEPARTMENT OF CHILD SERVICES ADMINISTRATIVE POLICIES AND PROCEDURES		
Policy Number: GA-7	Effective Date: April 1, 2008	Version: 1.0
POLICY TITLE: EMAIL RETENTION		
OVERVIEW: All e-mails sent or received on government computers and other devices are owned by the State of Indiana and may be public records as defined by the Access of Public Records Act. The content of the email is the determining factor establishing the document's retention or destruction per the DCS Records and Retention Schedule (RRS). DCS emails which are not considered transitory will be retained pursuant to Indiana law. Transitory emails may be deleted from the state system by Office of Inspector General (OIG) employees.		

I. DEFINITIONS

- a. Transitory messages: Messages that do not, a) set policy, b) establish guidelines or procedures, c) certify a transaction, or d) become a receipt. Transitory documents serve to convey information of temporary importance.
- b. Duplicate records: Messages sent to multiple people within State government. Information transmitted in this manner is considered a duplicate record. If retention is required of the original, the sender has the obligation to retain the email in accordance with the appropriate retention schedule.
- c. Retention requirements: A term used to refer to the rules set by the Indiana Oversight Committee on Public Records regarding the length of time different types of public records must be stored before they can be discarded.

II. REFERENCES

- a. [IC 5-14-3-2 Access to Public Records Act](#)
- b. [IC 5-15-5.1 State Commission on Public Records](#)
- c. [60 IAC 2 Microfilming Standards](#)
- d. [HR-3-8 Use of State Time and Equipment](#)

III. POLICY

Emails can be categorized into three broad categories:

- a. Transitory and Duplicate messages, including copies of emails sent to several people, as well as casual routine or personal communications – *No retention requirement*. Most emails are transitory. These emails may be deleted immediately. The following types of transitory email can be deleted unless additional substantive (i.e. non-transitory) information is included in the correspondence:
 1. Incoming list serve messages
 2. Personal emails
 3. Spam
 4. Non-policy agency announcements
 5. Telephone messages
 6. Published reference materials
 7. Invitations to meetings and replies
 8. Thank yous

9. Replies to routine questions
10. Out of Office auto-replies

Examples of email message categories requiring some level of retention include the following:

1. Containing information developed in preparing position papers, reports and studies;
 2. Reflecting official actions taken in the course of conducting agency business;
 3. Conveying information on agency programs, policy decisions, and essential transactions;
 4. Conveying statements of policy or the rationale for official decisions or actions;
 5. Documenting oral exchanges, such as meetings or telephone conversations, during which policy was discussed or formulated;
 6. Email calendars reflecting the daily appointments of officials conducting state business;
 7. Distribution lists for state business mail.
- b. Public records with a less than permanent retention period – Follow retention period for equivalent hard copy records as specified in an approved retention schedule. The record must be in hard copy or electronic format, which can be retrieved and interpreted for the legal retention period. When there is a doubt about the ability to retrieve an electronic record over the retention period of that record, the record may be printed out. Agencies may delete or destroy records only after receiving signed approval from the Commission on Public Records via the “Records Destruction Notification” – State Form 16.
- c. Public records with a permanent or permanent or archival retention period – Retention may be in the form of a hard-copy printout or microfilm that meets 60 IAC 2. The information must be eyereadable without interpretation. Questions concerning microfilm should be addressed to the Commission on Public Records, Micrographics Division at (317) 232-3381.

IV. PROCEDURE

- a. Each employee is exclusively responsible for managing all the email they send and receive; managing those email means that each employee must sort, file, retrieve, and archive or delete the email in accordance with these procedures.
 1. **Sorting** – involves promptly deleting email when allowed by IC 5-15 and the applicable record retention schedule. Sorting also involves routinely filing email that must be retained for the applicable retention period. To avoid wasting computer storage space, email should be deleted promptly if it is not a record under IC 5-15 and if it has no further value.
 2. **Filing** – email for short-term storage involves moving the email into folders created within email software. For emails that must be retained for longer timeframes, it may also mean printing and filing hard copies of email in a paper file or

converting the email into another software format for long term electronic filing.

When filing email that qualifies for confidential treatment, it is a good idea to create a confidential folder and place it within the project folder so you have a place for the confidential email that relates to that project.

Email that qualifies as a retainable record under IC 5-15-5.1 must be retained in accordance then applicable record retention schedule that has been approved by the Indiana Commission on Public Records (ICPR). The content of the email will determine which record retention schedule applies.

3. **Retrieving** – email means that, upon, request, employees must promptly retrieve email for which they are exclusively responsible (that is, sent or received from outside DCS). Email that is retrieved must include the transmission properties of the email. Upon receipt of a public records request or discovery request, the DCS employee responsible for the requested email must find and retrieve it in a timely manner just as he or she must be able to quickly retrieve and produce paper documents in his or her possession or control. DCS will develop its own specific system for uniform file-folder creation and filing. This system should be based on, or consistent with, the area's paper filing system. Each area should also develop a system for how and when to convert email to paper or microfiche for long-term storage. This long-term storage may be required based on applicable record retention schedules. These DCS procedures will allow staff to more easily locate and retrieve email.
4. **Archiving or deleting** – filed email must be done according to a record retention schedule approved by the ICPR. Archiving for the purposes of IC 5-15-5.1 involves the long-term storage of a record, including email, according to the applicable retention schedule. ICPR requires all long-term archiving of records to be done in paper, microfilm or microfiche format. Currently, records can not be archived on electronic media. As always, the transmission properties of the email are considered part of the email and must be archived with the email.
 - i. The content of the email determines the applicable retention schedule. Record retention schedules are maintained by each agency for agency specific records and approved through the ICPR process as well as the General Retention Schedule which applies to all agencies.

- ii. To avoid wasting computer storage space, email should be deleted or archived promptly when authorized by the applicable retention schedule. However, records relevant to pending or reasonably anticipated litigation must be preserved even if a record retention schedule allows for its destruction. Such records will be subject to a litigation hold by the General Counsel.¹

b. Managing email when employees leave

- 1. Each employee is responsible for organizing, filing and archiving email before leaving his or her position at DCS.
- 2. Supervisors are responsible for ensuring that their staff completes the final organization of email before leaving. Supervisors are also responsible for managing, filing, retrieving and archiving the email of their former staff.

c. Exceptions to Public Records Requirements and Confidential Emails - Every email written or received during the course of your work as a public employee is considered a “public record” by Indiana’s Access to Public Records Act. This means the public has a right to inspect and copy every email that a public employee writes or receives as part of his or her job unless the email fits a specific exception to public disclosure. The DCS General Counsel responds to all public records requests.

- 1. Exception to public disclosure requirements - The Public Records Act specifically lists thirty-three types of records that may be kept confidential by a public agency.
- 2. Confidential email – every effort should be made to protect confidential information from disclosure and from losing its confidential status. Questions about an email and its “confidential status” should be directed to the DCS General Counsel. (Your personal emails are not confidential.) Email that is intentionally or accidentally forwarded to someone outside of DCS can lose its privilege. To ensure confidential information is properly protected, employees should do the following before including confidential information in an email:
 - i. Clearly label the email as confidential, and warn the recipient not to forward the email to anyone who is not authorized to receive it. Labeling the subject line of the email as confidential in **bold face type** will make the confidentiality claim apparent when the email is still in the recipient’s

¹ Even if a record retention schedule provides for the destruction or alteration of a record (including an email), if that record is relevant to “pending” or reasonably anticipated litigation it must be preserved as potential evidence in that litigation. Such records will be subject to a “litigation hold” by DCS’s General Counsel or the Attorney General’s office. If you believe a record is relevant to pending or anticipated litigation, check with DCS’s legal counsel before destroying the record.

inbox. This, in turn, will make it less likely that the recipient will accidentally forward the confidential email to someone who is not authorized to see it.

- ii. Create a signature block that claims the email as confidential.
- iii. Name the exception(s) to disclosure you are relying upon for the claim of confidentiality, including the statutory citation.
- iv. Be aware that public employees who intentionally or knowingly disclosure information that is classified as confidential commits a Class A misdemeanor. In addition, an employee who recklessly discloses or fails to protect confidential information may be disciplined under personnel policies. See IC 5-14-3-10.
- v. Be aware that email may be inadvertently transmitted to parties outside DCS, which can waive any claim of privilege.
- vi. Be aware when sending extremely sensitive information, such as a company's trade secret, that it is possible for email transmitted over the Internet to be intercepted and copied.
- vii. Confirm whether a more secure form of communication is available or appropriate.

d. Permissible use of state resources

- 1. 40 IAC 2-1-9 states, "A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use."
- 2. DCS has adopted, [HR-3-8 Use of State Time and Equipment](#) to guide employees.

V. FORMS AND OTHER DOCUMENTS

- a. [Records Destruction Notification – SF 00016](#)

DATE: 03/13/08

James W. Payne, Director
Department of Child Services

A signed copy is on file.